

## REMARKS

This is a full and timely response to the non-final Office Action mailed May 25, 2005. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **I. Restriction Requirement**

The Office Action requires the Applicants to elect one of two groups of claims identified in the Office Action:

Group I, comprising claims 1 – 15, drawn to a press-fit fastener, classified in class 411, subclass 180; and

Group II, comprising claims 16 – 18, drawn to a method of producing a press-fit fastener, classified in class 470.

In response to the restriction requirement, Applicants elect to prosecute the claims of Group I, corresponding to claims 1 – 15, *with traverse*.

### ***The Restriction Requirement is Improper***

As provided in 35 U.S.C. §121, restriction to one of two or more claimed inventions is proper only if the inventions are “independent and distinct.” In its discussion of the proprietary restrictions, MPEP §803 further provides that a search and examination of two or more inventions can be made without “serious burden,” the Examiner *must* examine them on the merits even as if the claims are directed to distinct or independent inventions.

In the present case, Groups I and II, although not obvious in view of each other, are similar in subject matter. For at least this reason, Applicants respectfully submit that the inventions described in these claims are not “independent” as defined in MPEP §803 and that no undue burden would be placed on the Examiner to examine all claims. For at least the foregoing reasons, Applicants traverse the restriction requirement as improper.

## **II. Species Election**

The Office Action alleges that the application contains claims directed to more than one species of the generic invention. Specifically, the Office Action alleges that the claims are directed to the following patentably distinct species:

Species I of FIGs. 1, 11 and 13;

Species II of FIGs. 2 and 3;

Species IV of FIG. 4;

Species V of FIG. 5;

Species VI of FIG. 6; and

Species VII of FIG. 7.

The Office Action indicates that “claim 1 appears to be generic.” (Office Action, pg. 3). However, the Office Action further indicates that “Applicant is required under 35 USC 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.” (Office Action, p. 3).

Applicants respectfully traverse the election; however, in order to comply with the requirement, Applicants provisionally elect Species I of FIGs. 1, 11, and 13 for

examination. Furthermore, Applicants submit that Species I is also illustrated in FIGs. 2 and 3. Specifically, the only differentiating feature of the screw of FIG. 1 in comparison to the screw of FIGs. 2 and 3 is the design of the head. Accordingly, in that none of the presently pending claims are directed to the features of the head, any pending claims readable on FIG. 1 are also readable on FIGs. 2 and 3.

Applicants submit that claims 1 – 3, 8 – 10 and 12 – 15 are readable on Species I. Applicants also submit that claims 16 – 18 which are withdrawn from consideration due to the above restriction requirement are also readable on Species I.

***The Election Requirement is Improper***

In the present case, alleged Species I, II, IV, V, VI, and VII, although not necessarily obvious in view of each other, are very similar in subject matter. More specifically, each of FIGs. 1 – 7, 11 and 13 (representing the Species listed above) depict a press-fit fastener.

As specified in the Office Action, “claims 1 – 15, drawn to a press-fit fastener” is “classified in class 411, subclass 180.” (Office Action, p. 2). For at least this reason, Applicants respectfully submit that the inventions described in these claims are not “distinct” as defined in MPEP §802.01 and that the election requirement is therefore improper.

Additionally, as recited in the present Office Action, a search for all of these alleged “distinct” species would apparently be conducted *within the same class*. In such a situation, it clearly would not be overly burdensome to assess these “distinct” inventions at the same time.

Additionally, although not obvious in view of each other, claims 16 – 18 are similar in subject matter to claims 1 - 15. Accordingly, Applicants also submit that it would not be overly burdensome to assess claims 16 – 18 at the same time.

For at least the foregoing reasons, Applicants respectfully traverse the election requirement and respectfully request that the Examiner examine each of claims 1 – 18 together.

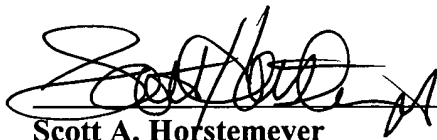
## CONCLUSION

Applicants expressly reserve the right to present non-elected claims, or variants thereof, in continuing applications to be filed subsequent to the present application.

Should the Examiner have any questions regarding this response, The Examiner is invited to telephone the undersigned attorney at (770) 933-9500.

No fee is believed to be due in connection with this response. If, however, any fee is deemed to be payable, you are hereby authorized to charge any such fee to Deposit Account No. 20-0778.

Respectfully submitted,

  
\_\_\_\_\_  
Scott A. Horstemeyer  
Reg. No. 34,183

**THOMAS, KAYDEN,**  
**HORSTEMEYER & RISLEY, L.L.P.**  
Suite 1750  
100 Galleria Parkway N.W.  
Atlanta, Georgia 30339  
(770) 933-9500